

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF TEXAS  
MARSHALL DIVISION

MEARS TECHNOLOGIES, INC.,

*Plaintiff*

v.

FINISAR CORPORATION,

*Defendant*

Civil Action No. 2:13-cv-376-JRG

**STIPULATION REGARDING PATENT ASSERTION**

Plaintiff, Mears Technologies, Inc. (“Mears”), brought this suit alleging that Finisar Corp. (“Finisar”) had infringed U.S. Patent No. 6,141,361 (“the ’361 patent”). Thereafter the Court construed the disputed claim limitations of that patent. *See* ECF Docket No. 74 at 24. Mears then filed a motion for leave to amend its infringement contentions to account for the Court’s claim construction. ECF Docket No. 95. The Court denied the motion to amend as being untimely. *See* ECF Docket No. 121. Following the Court’s denial of the motion to amend, Mears filed two lawsuits against Finisar’s downstream customers alleging infringement of the ’361 patent against, *inter alia*, Finisar’s downstream customers — *Mears Technologies, Inc. v. Verizon Services Corp.*, 2:14-cv-00937 (JRG) (EDTX, Filed October 8, 2014) and *Mears Technologies, Inc. v. AT&T Corp.* (2:14-cv-00938 (JRG) (EDTX, Filed October 8, 2014) (the “Carrier Suits.”). After several conferences of counsel, Mears filed amended complaints in the Carrier Suits to clarify that those suits do not implicate Finisar’s WaveShaper and Wavelength Selective Switch products, and products containing them, e.g., ROADM line cards, (“Finisar Products”).

The parties stipulate that:

- (1) In the event a final judgment of non-infringement of the '361 patent by the Finisar Products is entered in this action and is affirmed on appeal, Mears will not pursue any claim of infringement of the '361 Patent by any Finisar Product or by any product substantially equivalent thereto against any party.
- (2) Apart from its pursuit of an appeal of the orders in this action, Mears will not assert or pursue any claim of infringement of the '361 patent by the Finisar Products against any party until such time as it prevails on its appeal of the orders in this action. In the event that Mears asserts or pursues a claim of infringement of the '361 patent by the Finisar Products or any product substantially equivalent thereto, Finisar reserves all rights to pursue any course of action in response to such assertion.

Dated: December 8, 2014

Respectfully submitted,

/s/ Etai Lahav

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***Attorneys for Plaintiff Mears Technologies, Inc.***

**CERTIFICATE OF SERVICE**

I hereby certify that the counsel of record who are deemed to have consented to electronic service are being served today with a copy of the foregoing motion and associated documents via the Court's CM/ECF system per Local Rule CV-5(a)(3) on this 8<sup>th</sup> day of December, 2014.

/s/ Etai Lahav  
Etai Lahav